IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

SA.No. 180 of 1993()

(AGAINST THE JUDGMENT AND DECREE DATED 30/11/1992 IN AS.189/1992 OF THE SUB COURT,THALASSERY FROM THE JUDGMENT AND DECREE DATED 31/03/1992 IN OS.178/1990 OF THE MUNSIFF COURT, THALASSERY)

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APPELLANT: DEFENDANT:

PARETH ANANDAN, S/O.KRISHNAN,
AGED 48 YEARS, TEA TRADER,
CHALIL PARAMBATH HOUSE,
ERUVATTY AMSOM DESOM,
ERUVATTY P.O *.(D I E D)

**** LR'S IMPLEADED:**

*** IT IS RECORDED THAT THE APPELLANT IS DEAD AS PER ORDER DTD. 24/05/2006 IN S.A.**

****ADDL.APPELLANTS 2 TO 6 ARE IMPLEADED:**

A2. SAROJINI, W/O.LATE ANANDAN, CHALILPARAMBATH HOUSE, ERUVATTY P.O., KANNUR DISTRICT.

A3. SHAJI, S/O.LATE ANANDAN, CHALILPARAMBATH HOUSE, ERUVATTY P.O., KANNUR DISTRICT.

A4. SHANEESH, S/O.LATE ANANDAN, CHALILPARAMBATH HOUSE, ERUVATTY P.O., KANNUR DISTRICT.

...2/-

A5. SAJITHA, D/O.LATE ANANDAN,
CHALILPARAMBATH HOUSE, ERUVATTY P.O.,
KANNUR DISTRICT.

A6. SHYJA, D/O.LATE ANANDAN, CHALILPARAMBATH HOUSE,
ERUVATTY P.O., KANNUR DISTRICT.

(**ADDL.APPELLANTS 2 TO 6 ARE IMPLEADED OF THE LEGAL HEIRS OF DECEASED 1ST APPELLANT AS PER ORDER DTD. 28/06/2007 IN I.A.1052/07 IN S.A.)

BY ADV. SRI.T.A.RAMADASAN
SRI.A.K.ALEX

RESPONDENTS:
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1. MANAPATTI NANI, W/O.LATE
E.CHATHUKUTTY, AGED 56 YEARS,
HOUSE WIFE, CHALIL PARAMBATH HOUSE,
ERUVETTY AMSOM DESOM, ERUVATTY P.O.

2. MANAPATTI BALAN,
S/O.LATE E.CHATHUKUTTY,
AGED 43 YEARS, RESIDING ....DO.....

BY ADV. SRI.K.V.SOHAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.517/1993 AND I.A.NO.947/2007 IN S.A.NO.180/93

DISMISSED

28/06/2007 **SD/-M.SASIDHARAN NAMBIAR, JUDGE**

/TRUE COPY/

KSS

M.SASIDHARAN NAMBIAR,J.

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S.A. NO. 180 OF 1993

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Dated this the 28th day of June, 2007

JUDGMENT

The defendant in O.S.178/1990 on the file of Munsiff Court, Thalassery is the appellant. Plaintiffs are the respondents. Plaint schedule property is a building bearing No.3/577 in R.S.No.20/1B of Eruvatty village. Respondents originally instituted RCP 11/1989 seeking an order of eviction under section 11 of Kerala Buildings (Lease and Rent Control) Act, contending that appellant is the tenant of the plaint schedule building. Appellant in the objection denied the title of respondents. Rent Control Court finding the denial of title bona fide, directed respondents to institute a suit for recovery of possession. The suit was instituted thereafter seeking a decree for possession with mesne profits. The case of respondents in the plaint was that the land on which the building is situated

was obtained as per an oral lease by the husband of first respondent, Chathukutty, the father of second respondent, from Pareth Kanaran as per an oral lease in 1937 and Chathukutty constructed a shed and started trade in tea and later in 1949 the shed was demolished and plaint schedule building was constructed and he continued the business till his death and thereafter second respondent continued the business for some time and when he was constrained to stop the business, the building was rented out to appellant on oral lease on 1.6.1974 on a monthly rent of Rs.25/- and when a notice was issued demanding surrender of possession, appellant denied the lease and therefore respondents are entitled to a decree for recovery of possession. It was contended that appellant kept the rent in arrears and the building is bona fide needed for second respondent to start a business. Appellant filed a written statement denying the title contending that there was no oral lease in favour of Chathukutty and

respondents have no title to the plaint schedule building and therefore they are not entitled to a decree for recovery of possession. Before the trial court, second respondent was examined as PW1 and appellant was examined as DW1. Exts.A1 to A9 series and Exts. B1 to B5 were marked. On the evidence, learned Munsiff found that respondents did not establish their title to the plaint schedule building and therefore they are not entitled to the decree for recovery of possession. The suit was dismissed. Respondents challenged the decree and judgment before Sub Court, Thalassery in A.S.189/1992. Learned Sub Judge on reappreciation of evidence held that being a civil case, it is to be decided on preponderance of probability and the fact that Chathukutty and thereafter first appellant is shown as the owner of the plaint schedule building from 1962 onwards establish that the building belongs to respondents and therefore held that respondents have title to the plaint schedule property. Holding that the need alleged

is bona fide. Learned Sub Judge granted a decree for recovery possession holding that grounds under section 11(3) of Kerala Buildings (Lease and Rent Control) Act was established. It is challenged in the Second Appeal.

2. Second appeal was admitted formulating the following substantial questions of law.

1) In view of Exts.B1 to B3 and B5 establishing title and possession to the property, was it correct for the first appellate court to rely on Ext.A4 series of building tax receipts to find out title of the plaint schedule building?

2) When the defendant had raised a contention of adverse possession, was the trial court bound to frame the issue and decide the same?

3) When the defendant denies title of the plaintiffs, should not the court decide the case on the evidence of the plaintiffs instead of searching for the weakness of defence case?

3. Learned counsel appearing for appellant and respondents were heard.

4. Case of the respondents was that plaint schedule building was constructed by Chathukutty, the husband of the first respondent, and father of second respondent in the land obtained on oral lease from Kanaran in 1937. The plaint does not disclose that Kanaran was the paternal uncle of the first respondent. Ext.B1 settlement deed executed by Kanaran along with Manikkam, the niece, and Bappu, the nephew, in 1947 establish that the property originally belonged in jenm to Kaitheri Manikkam thavazhy tharwad . It also shows that the property was obtained by Kanaran as per a lease which was subsequently renewed as per registered marupattom deed dated 2.1.1946. Ext.B1 also discloses that out of the property obtained by Kanaran under the registered marupattom, the western portion of the entire paramba, was gifted by Kanaran in favour of his wife and children. Ext.B1 settlement deed was entered into in respect of the balance extent of the property covered under Ext.B1. Under Ext.B1 settlement deed, the

property obtained under the registered marupattom, excluding the property gifted to the wife and children of Kanaran, life interest alone is provided to Kanaran and nephew Bappu. It was specifically provided that on their death, the property would devolve the third executant Manikkam. The Chathukutty, the husband of first respondent and Krishnan the father of appellant are the children of Manikkam. Ext.B2 partition deed executed by Krishnan and Chathukutty the children of Manikkam in 1966 discloses that the property obtained by Manikkam under Ext.B1 which was the property originally obtained by Kanaran excluding the property covered under gift deed, were divided between them and the respective portions were allotted to their respective sharers. The case of appellant in the written statement was that plaint schedule property forms part of the property allotted to Krishnan under Ext.B2. Relying on the evidence of DW1 that Ext.B2 does not take in the plaint schedule property, first

appellate court held that appellant did not derive any title to the plaint schedule property under Ext.B1 or B2.

5. Title claimed by respondents is the oral lease by Kanaran in favour of Chathukutty. The title of respondents cannot be upheld either on the failure of appellant to prove his title or on the weakness of the case set up by appellant.While appreciating the case of respondents on the oral lease from the uncle Kanaran, one aspect cannot be ignored. Respondents are setting up a lease from the uncle Kanaran though it was not disclosed in the plaint. As the property allegedly obtained by Chathukutty belongs to Kanaran, it could only be part of the property covered under the registered marumpattom of 1946. Respondents have no case that Kanaran had any other property to grant a lease. If so, unless the said property was excluded under Ext.B2 settlement deed the property should definitely be part of that property. Ext.B1 does not show any lease. Under Ext.B1, Kanaran had no

right to grant a lease also. Ext.B2 does not give any indication to hold that there was an oral lease in respect of any portion of the property obtained by Kanaran under the registered marupattom of 1946 in favour of Chathukutty as claimed by respondents. If there was such an oral lease as claimed by respondents, it would have been definitely mentioned in Ext.B1 or atleast it would have been mentioned in Ext.B2 where the property was divided by the alleged lessee and his brother. When Ext.B2 partition deed was entered into, by the alleged lessee Chathukutty and his brother Krishnan, atleast at that point, it would have been mentioned that the property so divided does not take in the leasehold property allegedly obtained by Chathukutty. In such circumstance,on the evidence, it is not possible to hold that there was a lease in favour of Chathukutty as claimed by respondents. No evidence was adduced to establish the oral lease set up in the plaint. Even PW1 has no case as to what were the terms of the lease and whether any

rent was paid. On the evidence, it can only be found that the lease set up by respondents was not established.

6. The first appellate court relied on the entry in Ext.A4 series of copies of building tax register extracts containing entries regarding the ownership of the building, to uphold the title set up by the respondents.

7. The argument of Advocate Sri.Sohan, learned counsel appearing for respondents, is that in the absence of any other document regarding title, the entries in the building tax register are relevant materials to decide the title and as found by the first appellate court, civil case has to be decided on the evidence on record and that too on the preponderance of probability and therefore Ext.A4 series establish the title. Reliance was placed on the decision of the Apex Court in **Harish Chander v. Ghisa Ram (AIR 1981 SC 695), and Sri.Bhimeshwara Swami Varu Temple v. Pedapudi**

Krishna Murthi (AIR 1973 SC 1299) and that of a learned single Judge of this court in **Kunju v. Executive Officer, Thrikkakara Panchayat (1984 KLT 466.**) It was argued that the entries in the building tax registers are made by the Executive Officer of the Panchayat and it is a quasi judicial function and the fact that appellant did not take any steps to change the ownership of the building till Ext.A5, establish that respondents have title to the plaint schedule property.

8. Learned counsel appearing for appellant relied on the decision of the Apex Court in **E.Parashuraman v. V.Doraiswamy (2006) 1 SCC 658)**and it was argued that it is well settled that entries in the revenue records do not conclusively confer title.

9. The entries regarding the ownership of the building in the building tax demand register maintained by the Panchayat or Muncipality or Corporation, are not made after an enquiry

regarding the ownership of the building. The building register is prepared for the collection of the building tax due to the local authority. Therefore in the absence of any other evidence, the entries with regard to the ownership of the building in the Building tax demand register by itself, will not establish the title. Therefore on the evidence first appellate court was not correct in holding that respondents have title to the plaint schedule building relying on the entries in the building tax demand register.

10. From the facts and evidence on record, it is clear that plaint schedule property is part of the property obtained by Kanaran as per registered marupattom of 1946. It is also clear that excluding the property gifted by Kanaran in favour of his wife and the children, the entire remaining property is covered by the terms of Ext.B1 settlement deed. As per Ext.B1 settlement deed, after the death of Kanaran and Bappu the property devolved on Manikkam, the mother of Chathukutty and

krishnan. The property so obtained by Manikkam was divided under Ext.B2 by her children Chathukutty and Krishnan. Therefore plaint schedule property could only be part of the property divided under Ext.B2. If that be so, the title of the plaint schedule property could only be determined in accordance with Ext.B2 after demarcating the properties allotted to Krishnan and Chathukutty under Ext.B2. If on such demarcation, the building falls in the property allotted to Chathukutty, respondents have title to the property and if it falls in the property allotted to Krishnan, appellant has title to the property.

11. As these aspects were not considered by the first appellate court, the suit can only be remanded.

The appeal is allowed. The decree and judgment passed by the Sub Court, Thalassery is set aside. O.S.178/1990 is remanded back to the Munsiff Court, Thalassery for fresh disposal. Plaintiffs to identify the plaint schedule

property and decide whether it falls in the property allotted to Chathukutty or Krishnan under Ext.B1 and decide the title accordingly. It is made clear that the burden is on the plaintiffs to establish the title and if they fail to establish the title, they are not entitled to the decree for recovery of possession. As the parties did not raise their claim properly, in the interest of justice, plaintiffs are permitted to amend the plaint incorporating the necessary claim. The defendant is also permitted to raise appropriate plea. Parties are directed to appear before the Munsiff Court, Thalassery on 6.8.2007.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A..NO.180 /1993

JUDGMENT

28TH JUNE,,2007